

**KENTUCKY PERSONNEL BOARD
MINUTES OF NOVEMBER 14, 2008**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Tina Goodmann on November 14, 2008, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Christine J. Goodmann, Chair
Robert B. Frazer, Vice-Chair
Betty Gibson, Member
Lisa T. Hendricks, Member
M. Suzanne Cassidy, Member
Julie True, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

2. **READING OF THE MINUTES OF REGULAR MEETING HELD OCTOBER 10, 2008**

The minutes of the last Board meeting had been previously circulated among the members. Chair Goodmann asked for additions or corrections. Ms. Cassidy moved to approve the minutes as submitted. Ms. Gibson seconded, and the motion carried 5-0. (Chair Goodmann does not vote unless noted.) The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT:**

Mr. Sipek reported that he, Mr. Crocker and Chair Goodmann appeared before the Interim Joint State Government Committee on October 22, 2008. [Ms. True attended to observe the meeting.] Basically, the Board's Annual Report was presented and they answered questions from the committee members. The Board was asked to appear on an annual basis.

Mr. Sipek stated that he attended a meeting of the Personnel Council on November 12, 2008, to discuss resignation by regulation (employees absent without leave). Mr. Sipek stated that the council was made up of personnel administrators from various agencies that meet once a month.

Mr. Sipek reported that Ms. Perkins and Mr. Crocker developed a Witness and Exhibit List Form and a Discovery Request Form to assist *pro se* appellants. Mr. Sipek stated that the result is that both the Appellee and the Appellant are more prepared for hearings.

Mr. Sipek presented former Chairman Greg Higgins with a plaque commemorating his tenure with the Board and thanked him for his service. [Mr. Higgins was elected to the Board and served from July 10, 2006 to October 10, 2008, due to his retirement November 1, 2008.]

Chair Goodmann called for the Personnel Cabinet's Report.

4. **PERSONNEL CABINET'S REPORT:**

Hon. Dinah Bevington, Acting Executive Director for Office of Legal Services, was present for the Personnel Cabinet and reported the following:

Ms. Bevington advised that the Personnel Cabinet received three responses to their memorandum to all agencies pertaining to either extending or reducing probationary periods of certain positions [101 KAR 1:325]. About seven positions may have the probationary period changed. Ms. Bevington stated that she will provide the responses before the next Board meeting.

Ms. Bevington stated that in response to their memo that went to all state agencies concerning the vacant Board Member position (vacated by former Chairman Higgins); they have received a few questions which are forwarded to the Personnel Board.

Ms. Bevington stated that the health insurance open enrollment went smoothly with only a few technological glitches. Additional time was given to employees to make sure everyone signed up, which Ms. Bevington said was successful.

Ms. Bevington advised that at the October 28th meeting of the Governor's Employee Advisory Council [GEAC]. The Master Agreement has been signed and the Cabinet is in the process of getting a list of union stewards who will represent different state agencies. The next step is to start union negotiations, most likely January 2009.

At the conclusion of Ms. Bevington's report, she thanked the Board Members for visiting the Personnel Cabinet after the October Board meeting.

Mr. Frazer asked why all employees had to re-enroll health insurance. Ms. Bevington stated that there were two reasons: A concern that all dependents had to be looked at, to indicate correct status and there were a few new plans, which needed to be chosen by the employee.

With no further questions from the Board Members, Chair Goodmann called the representative of the Kentucky Horse Racing Commission to come forward for the petitioned position.

5. PETITIONED POSITION(S)

- A. Kentucky Horse Racing Commission – 3 positions
 - a. Administrative Coordinator
 - b. Executive Assistant
 - c. Special Assistant

Present was the Hon. Leesa Moorman, Director of Licensing, Kentucky Horse Racing Commission. The Governor’s Task Force on the Future of Horse Racing asked the Agency to come up with adequate staffing solutions and recommendations, to make sure that the Agency is the signature industry for the Commonwealth of Kentucky. Ms. Moorman stated that the three petitioned positions are primarily policy-making positions. Ms. Moorman advised that two current positions are changing titles: the non-merit Executive Secretary II position will be abolished and replaced with the Administrative Coordinator position and the non-merit Executive Staff Advisor position will be abolished and replaced with the Executive Assistant position. However, the Special Assistant position will be a new position. Ms. Moorman advised that the positions are non-merit, sufficiently budgeted for the current fiscal year, and approved by the Personnel Cabinet.

Ms. True moved to approve the three petitioned positions (Administrative Coordinator, Executive Assistant, and Special Assistant). Ms. Gibson seconded and the motion carried 5-0.

Chair Goodmann called the parties forward for oral argument.

6. ORAL ARGUMENTS:

- A. ~~Amanda Carroll v. Cabinet for Health and Family Services (Request by Appellee)~~
--Request withdrawn
- B. Nancy Nusz, et al v. Education and Workforce Development Cabinet and Personnel Cabinet (7 appeals) (Request by Appellee Department of Education)

Present were counsel for Appellants, the Hon. Jennifer Hatcher; counsel for Appellee Education and Workforce Development Cabinet, the Hon. Kevin Brown; and counsel for Appellee Personnel Cabinet, the Hon. Dinah Bevington. The parties answered questions from the Board.

7. REQUEST FOR INVESTIGATION:

- A. Department of Agriculture (disciplinary action) – request by Mona Dempsey
 - Response of Dempsey to letter from Department of Agriculture
 - Response by Department of Agriculture
 - Response by Vicki Stucker

Present was Ms. Mona Dempsey. She stated that after she began employment with the Department of Corrections in April 2008, she began receiving harassing phone calls, well over 50 within a four month period. Since Ms. Dempsey has a background in law enforcement, being a former police officer, she asked for and received agency approval to begin her own investigation. After Ms. Dempsey explained how she found out the harassing calls were made by Ms. Vicki Stucker with the Department of Agriculture, she contacted the Agency to file a complaint and spoke with Ms. Danita Fentress-Laird. Ms. Fentress-Laird, as told by Ms. Dempsey, stated this was a “slam dunk” case for dismissal of Ms. Stucker (Ms. Stucker had previously been penalized by the Agency for misconduct). Ms. Dempsey was upset with the Agency for their lack of communication with her concerning the investigation, as she had concerns for safety of her family, her coworkers, and herself. Ms. Dempsey believes that Ms. Stucker should be dismissed from her job with Agriculture. Ms. Dempsey advised that Ms. Stucker was given a ten-day suspension without pay.

Chair Goodmann advised that the Board has copies of all the correspondence between the Agency and Ms. Dempsey. Mr. Frazer asked Ms. Dempsey what she wanted the Board to do for her. Mr. Crocker stated that it was beyond the Board’s jurisdiction to impose any further discipline upon an employee who has already been disciplined by an agency. Mr. Crocker asked Ms. Dempsey if the harassing phone calls had stopped. Ms. Dempsey advised they had stopped. Ms. Dempsey wanted to know where the “line is drawn” when an employee commits a crime during state time, that Agriculture has set a tone for other agencies. Mr. Crocker stated the Board could conduct an investigation, but nothing would be gained by it. Chair Goodmann stated that there should be “zero-tolerance” from agencies of any type of harassment, and stated she wished there was something the Board could do. Mr. Sipek stated that it would have been appropriate for the Agency to discuss with Ms. Dempsey concerning the investigation and the penalization imposed upon Ms. Stucker, and that maybe that could be communicated to the Department of Agriculture. Ms. Cassidy asked if it would be appropriate to send a memo to all agencies concerning this issue. Ms. Dempsey stated that she understood the Board’s position and appreciated their time.

Ms. Cassidy made a motion that the Board send a letter to all agencies. Ms. True seconded and the motion carried 4-1, with Mr. Frazer opposing.

Mr. Frazer moved to deny the request for investigation. Ms. Gibson seconded and the motion carried 5-0.

- B. Department of Alcoholic Beverage Control (Investigator Manager’s position) –
Request by anonymous employees
--Response by Alcoholic Beverage Control

No parties appeared before the Board; however, Mr. Sipek stated that the Board has an anonymous request and a response from the Department of Alcoholic Beverage Control.

Mr. Frazer moved to deny the request for investigation. Ms. Hendricks seconded and the motion carried 5-0.

C. **Transportation Cabinet Reorganization (Request by Randall Arvin)**

No parties were present; however, Mr. Sipek advised that this matter was on the agenda for discussion. Several appeals have been filed and that more would be learned by the Board after the appeals have commenced. Mr. Sipek stated that he would like to set a timeframe to review this matter again by the Board. Ms. Cassidy asked if there were any appeals that were unique, beyond the reorganization. Mr. Crocker stated that maybe one appeal was unique, but part of the reorganization. Mr. Sipek stated that some appeals will have shared issues and some will be unique. Ms. Cassidy stated that maybe the issue should be looked at within three or four months.

Ms. Cassidy moved to defer this matter for four months. Ms. True seconded and the motion carried 5-0.

8. **CLOSED SESSION:**

Mr. Frazer moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Ms. Gibson seconded. Chair Goodmann stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (10:55 a.m.)

Mr. Frazer moved to return to open session. Ms. Gibson seconded and the motion carried 5-0. (11:50 a.m.)

9. **CASES TO BE DECIDED:**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. **Amanda Carroll v. Cabinet for Health and Family Services**

Ms. Cassidy moved to note Appellant's Exceptions and Motion to File Late Response to Exceptions, Appellee's exceptions and Request for Oral Argument, Appellee's Request to Withdraw Oral Argument, and Appellant's Response to Request to Withdraw Oral Argument and to accept the recommended order sustaining the appeal to the extent the dismissal was reduced to a thirty-day suspension. Mr. Frazer seconded and the motion carried 4-1, with Mr. Frazer opposing.

Ms. Cassidy moved to deny Appellant's Motion to File Late Response to Exceptions and to grant Appellee's Request to Withdraw Oral Argument. Ms. True seconded and the motion carried 5-0.

B. Nancy Nusz, et al v. Education and Workforce Development Cabinet and Personnel Cabinet (7 appeals)

Mr. Frazer moved to defer this matter to the next Board meeting. Ms. Hendricks seconded and the motion carried 5-0.

C. Tammy Buckler v. Justice and Public Safety Cabinet

Ms. True moved to defer this matter to the next Board meeting. Ms. Gibson seconded and the motion carried 3-2 (with Chair Goodmann voting), with Mr. Frazer and Ms. Hendricks opposing, and with Ms. Cassidy recusing.

D. Virginia Cox v. Department of Veterans' Affairs

Ms. Cassidy moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

E. Anthony Knipp v. Transportation Cabinet

Ms. Gibson moved to accept the recommended order sustaining the appeal. Ms. True seconded and the motion carried 5-0.

F. Brenda Lauderdale v. Cabinet for Health and Family Services

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

G. Mary Maeser v. Cabinet for Health and Family Services

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 5-0.

H. Derrick Minix v. Transportation Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 5-0.

I. Jason Mullins v. Cabinet for Health and Family Services

Ms. Gibson moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

J. Anthony Price v. Energy and Environment Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

K. Shawn Rudd v. Justice and Public Safety Cabinet

Ms. Gibson moved to accept the recommended order dismissing the appeal. Mr. Frazer seconded and the motion carried 4-0, with Ms. Cassidy recusing.

L. Joseph Urban v. Tourism, Arts and Heritage Cabinet

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 5-0.

10. **WITHDRAWALS:**

Mr. Frazer moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Hendricks seconded and the motion carried 5-0.

- A. Goble Cantrell v. Dept. of Corrections
- B. Barry Garner v. Transportation Cabinet
- C. Richard George v. Military Affairs
- D. Tina Graves v. Justice and Public Safety Cabinet
- E. Terry Popplewell v. Tourism, Arts & Heritage Cabinet
- F. Rick Quarles v. Transportation Cabinet (2 appeals)
- G. Rebecca Stearns v. Justice and Public Safety Cabinet and Personnel Cabinet
- H. Scott Stovall v. Personnel Cabinet
- I. Andrew True v. Personnel Cabinet
- J. Jeffrey Voyles v. Justice and Public Safety Cabinet
- K. Almanza Lyons v. Cabinet for Health and Family Services
- L. Tracy Wooldridge v. Cabinet for Health and Family Services

11. **SETTLEMENTS:**

Ms. Gibson moved to consider the following settlement and to accept the settlement as submitted by the parties sustaining the appeal to the extent set forth in the settlement. Ms. Hendricks seconded and the motion carried 5-0.

- A. Toni Collier v. Tourism, Arts and Heritage Cabinet (mediated)
- B. Pamela David vs. Dept. of Juvenile Justice
- C. Sammy Gregory v. Transportation Cabinet
- D. Walter Hammons v. Finance and Administration Cabinet (mediated)
- E. Omoadoni Obielodan v. Cabinet for Health and Family Services (2 appeals)
- F. Robert Whoolery v. Justice and Public Safety Cabinet
- G. Linda Cooper v. Department of Veterans Affairs

- H. Andrew Kerrick v. Justice and Public Safety Cabinet
- I. Sharon O'Bryan v. Cabinet for Health and Family Services

12. **OTHER:**

Board Calendar for 2009

Mr. Sipek advised that the Board members should discuss setting up a schedule for the 2009 Board meetings. After some discussion it was agreed to have the Board meetings every second Friday of each month, except for April.

Ms. Gibson moved that the Board meet on the second Friday of each month in 2009, with the exception of April, when the Board will meet on the third Friday. Mr. Frazer seconded and the motion carried 5-0.

Board Vacancy

Mr. Sipek advised that the Personnel Cabinet sent out notification of the Board vacancy. Mr. Crocker advised that so far eleven applicants have applied in response to the Cabinet's notice. The deadline for applications was November 21st. A subcommittee comprised of Chair Goodmann, Ms. True and Ms. Gibson, was formed to review all the applicants' resumes and to select the top three to interview.

Ms. Hendricks made a motion to establish the subcommittee. Ms. Cassidy seconded and the motion carried 5-0.

Chair Goodmann asked if there was any further business, which Mr. Sipek advised there was not.

There being no further business, Ms. Cassidy moved to adjourn. Ms. Hendricks seconded and the motion carried 5-0. (Noon)

Christine J. Goodmann, Chair

Robert B. Frazer, Vice-Chair

Betty Gibson, Member

Lisa T. Hendricks, Member

Suzanne Cassidy, Member

Julie True, Member

